

certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Approvals of NO<sub>x</sub> exemption requests under section 182(f) of the CAA do not create any new requirements. Therefore, I certify that approval of the State's partial NO<sub>x</sub> RACT exemption request will not have a significant impact on any small entities affected.

### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action will approve a redesignation to attainment, pre-existing requirements under State or local law, and an exemption from requirements otherwise imposed under the CAA; this action will impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

#### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: May 14, 1997.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 97–13649 Filed 5–22–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL–5828–5]

### National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Middletown Air Field Site, located in Middletown, Pennsylvania, from the National Priorities List and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III announces its intent to delete the Middletown Air Field Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Pennsylvania Department of Environmental Protection (PADEP) have determined that all appropriate CERCLA response actions have been implemented and that no further cleanup is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment. **DATES:** Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before June 23, 1997.

**ADDRESSES:** Comments may be submitted to Nicholas J. DiNardo, (3HW50), Project Manager, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 566–3365.

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations:

U.S. EPA, Region III, Hazardous Waste Technical Information Center, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–5363.

Middletown Public Library, 20 North Catherine Street, Middletown, PA 17057, (717) 944–6412.

**FOR FURTHER INFORMATION CONTACT:** Nicholas J. DiNardo (3HW50), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–3365.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

### I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the Middletown Air Field Site, Dauphin County, Pennsylvania, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site from the NPL for thirty calendar days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- (i) Responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further cleanup is appropriate; or

(iii) As set forth in the investigative findings for the Site, the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, section 121(c) of CERCLA, 42 U.S.C. 9621(c), the NCP at 40 CFR 300.430(f)(4)(ii) and EPA's policy, OSWER Directive 9320.2-09, dated August 1995, provide that a subsequent review of the site will be conducted at least every five years after the initiation of the first remedial action at the Site to ensure that conditions at the Site remain protective of public health and the environment. In the case of this Site, EPA conducted a "five year review" in August of 1996. Based on the inspection, EPA determined that conditions at the Site remain protective of public health and the environment. As explained/discussed below, the Site meets the NCP's deletion criteria listed above. Five-year reviews will continue to be conducted at the Site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure.

Releases shall not be deleted from the NPL until the state in which the release was located has concurred on the proposed deletion. 40 CFR 300.425(e)(2).

All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site can be restored to the NPL without application of the Hazard Ranking System. 40 CFR 300.425(e)(3).

### III. Deletion Procedures

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to assure public involvement in the decision. During the proposal to delete a site from the NPL, EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at

or near the site that is proposed for deletion;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period in a Responsiveness Summary.

If appropriate, after consideration of comments received during the public comment period, EPA then publishes a notice of deletion in the **Federal Register** and places the final deletion package, including the Responsiveness Summary, in the Site repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As stated in Section II of this Notice, § 300.425(e)(3) of the NCP provides that the deletion of a site from the NPL does not preclude eligibility for future response actions.

### IV. Basis for Intended Site Deletion

The following site summary provides EPA's rationale for the proposal to delete the Middletown Air Field Site from the NPL.

The Site is located in Dauphin County, Pennsylvania, about 8 miles southeast of Harrisburg. It is situated between the boroughs of Highspire and Middletown along Pennsylvania Route 230, and bordered by the Susquehanna River to the south. The site property was initially established as Camp George Gordon Meade by the Army in July 1898 and then was operated as a pickle farm by the H.J. Heinz company until May 15, 1917, when ground was broken for an Army Signal Corps storage depot (the Aviation General Depot, later known as the Middletown Air Intermediate Depot). Flight activities began on the site in 1918 and the airfield was named Olmstead Field in 1923. In 1947 it became known as Olmstead Air Force base. In 1967 Olmstead Air Force Base was transferred to the Commonwealth of Pennsylvania and the facility was renamed Olmstead State Airport. It was renamed Harrisburg International Airport in 1971.

The former Air Force field and most of the former Air Force industrial buildings (approximately 625 acres) are currently owned by the Commonwealth of Pennsylvania. The Pennsylvania Department of Transportation (PennDOT) maintains and manages the Harrisburg International Airport (HIA) portion. The 193rd Special Operations group of the Pennsylvania Air National Guard operates a small portion of the Site, just east of the airport complex. Approximately 218 acres of former

administrative and housing facilities north of Route 230 are owned by the Harrisburg campus of Pennsylvania State University. An additional 93 acres of former Air Force warehouse facilities north of the Pennsylvania Turnpike (I-76) were originally leased to Fruehauf Industries (Fruehauf) in May 1966 by a local industrial development authority. Fruehauf manufactured truck trailers and its Site activities including welding, punching, fastening, foaming and painting. By May 23, 1986, Fruehauf had acquired ownership of the 93 acres. In June 1995, the property, excluding the North Base Landfill, was sold to First Industrial Realty Trust, Inc. by Fruehauf. Fruehauf still retains ownership the North Base Landfill property.

Activities throughout the history of the Site included:

- Warehousing and supply of parts, equipment, general supplies, petroleum, oil and lubricants (POL) for the Department of the Army's Northeast Procurement District;
- Complete aircraft overhaul including stripping, repainting, engine overhaul, reassembly, and equipment replacement;
- Engine and aircraft testing; and
- General base support maintenance and operation.

HIA currently conducts general airport operations and maintenance, and leases buildings to fixed base operators and industrial tenants. Tenants have performed a number of activities at this Site, including:

- Aircraft maintenance operations, aircraft paint stripping and repainting, and parts cleaning;
- Aircraft instrument overhaul and repair;
- Fabric dyeing;
- Machine shop operations; and
- Typewriter ribbon inking and cartridge assembly.

Various studies have been conducted by both EPA and the Pennsylvania Department of Environmental Protection (PADEP, formerly the Pennsylvania Department of Environmental Resources), at the facility since 1983 to investigate and monitor areas that were affected by operations at the Site. In March 1983, PADEP discovered the volatile organic compound (VOC) trichloroethylene (TCE) in six of ten HIA production wells. This discovery triggered subsequent environmental investigations and studies, and the installation of a water treatment system that is currently still in use at the facility.

In 1984, EPA conducted ground penetrating radar and magnetometer surveys at the Runway, Industrial, and

North Base Landfill areas at the Site. EPA removed nine partially exposed 55-gallon drums from a fill area located along a stream bank northeast of the Meade Heights housing complex. The drums were empty except for water and coatings of a hard, black tarry substance. EPA sampled the drum contents and found that they did not exhibit the characteristic of EP toxicity (as described in 40 CFR 261.24) at the time of the sampling.

EPA evaluated the Site under the Hazard Ranking System and was proposed for inclusion on the National Priorities List (NPL) on October 1, 1984. EPA added the Site to the NPL on June 1, 1986. 51 FR 21054 (June 6, 1996). EPA's initial response after the NPL listing focused on the presence of VOCs found in the groundwater beneath the Site. EPA selected an interim remedy in the December 30, 1987, Record of Decision (1987 ROD) that addressed HIA's contaminated drinking water supply. The selected response consisted of the installation of an air stripping system for the removal of VOCs to meet the drinking water standards. The existing treatment system consists of two air strippers, an ion exchange unit for the removal of hardness, and disinfection prior to distribution.

A train spill occurred northwest of the runway area on June 4, 1988, approximately 500 feet west of Production Well HIA-12. Diethylene glycol and mineral oil were released to the soil as a result of the spill. PADEP remediated the site of the spill through pumping ground water into settling tanks, skimming the mineral oil, biotreatment of the diethylene glycol, and reinjection of the treated water. PADEP completed the remediation in 1989.

In order to fully characterize the remainder of the Site and identify potential public health and environmental concerns, EPA issued a contract for an extensive study of the Site in 1988. The study was performed in two phases—the Remedial Investigation (RI) and the Feasibility Study (FS). See 40 CFR 300.430 (d) and (e).

Based upon the 1988 RI/FS for the Site, the Operable Unit 2 Record of Decision (1990 ROD), signed on December 17, 1990, directed continued operation of existing drinking water supply treatment and the current distribution system, the institution of groundwater use restrictions, and additional monitoring of the water supply wells. The remedy contained in the 1990 ROD also directed the use of institutional controls to address direct contact and other threats from

potentially contaminated soils that may be exposed at the Site during construction, demolition, excavation or other activities that disturb Site soils and involve the potential for worker and public exposure to presently contaminated soils. The 1990 ROD also selected final remedial actions at study areas (SAs) 1, 2, 3, and 4 and an interim action at SA-5, since the field investigation results at SA-5 were inconclusive in determining contaminant sources and their potential environmental impact.

Under the 1990 ROD, the remedy selection for SA-1 involved the continued operation of the ground water treatment system currently in place at the Site, the institution of restrictions for all ground water use throughout the Site (which extends from the North Base Landfill to the Susquehanna River), and the addition of monitoring for the water supply wells.

The remedy for SA-2 and SA-3 included land use and access restrictions, and the development of public and worker health and safety requirements for activities involving construction, demolition, and excavation or other activities that would disturb the Site soil.

The remedy for SA-4, which provided for the installation of "sentinel wells" designed to assure protection of well MID-04 from contaminants found on the Site, was coupled with the remedy for SA-1 to efficiently and effectively address ground water contamination at the Site.

The interim action required for SA-5 included a study evaluating the water quality of, and organisms living in, the stream near Meade Heights.

After reviewing the 1990 ROD, PADEP asserted that the ROD did not fully investigate the relationship between soil and ground water contamination, nor did it consider active soil cleanup technologies. In 1992, an Explanation of Significant Differences (ESD) was issued to address PADEP's concerns by expanding the scope of the Supplemental Studies Investigation (SSI) required by the 1990 ROD. The ESD explained that the ground water remedy selected in the 1990 ROD was an interim action and that the final decision would follow in the third ROD. The ESD also rescinded the requirement in the 1990 ROD, that the existing water supply system must continue to operate even if airport operations cease would be eliminated and reevaluated at a later date.

The SSI concluded that no contaminants of concern were identified in the surface water or sediment at the Site above the Biological Technical

Assistance Group (BTAG) screening levels. Furthermore, based on the Baseline Risk Assessment (BRA) that was performed as part of the SSI, EPA concluded in the third ROD, issued on September 17 1996, that:

- No additional action, other than that already required by earlier RODs, is necessary to address soils at the Site. Therefore all remedial designs and remedial actions are complete, and no cleanup standards are set for any operable unit.

- Institutional restrictions on ground water use will be continued at the Site.

- Monitoring of surface water and sediment in the Susquehanna River as required by the 1990 ROD should continue. In addition, two locations involving the J-5 storm drain, situated next to building 208, should also be sampled quarterly and evaluated as part of the five year review for the Site. These locations are the J-5 storm drain and the outfall of the J-5 storm line at Post Run. The sampling frequency may be modified by PADEP after one year. No other sampling for surface water and sediment is deemed necessary at this time.

- Monitoring of the sentinel wells in the North Base Landfill Area, as required by the 1990 ROD for the protection of the MID-04 well, should continue. No other actions for this area are deemed necessary at this time.

- No action is required for surface water or sediment in Meade Heights.

- In the event that the HIA should cease or reduce the pumping of the production wells, PADEP will assess the potential for currently contained hazardous substances to migrate towards the Susquehanna River and PADEP, as provided for in the April 16, 1997, Memorandum of Understanding (MOU) between PADEP and PennDOT, may impose a sampling and review period (not to initially exceed 5 years) to assess whether any impact is occurring regarding the Susquehanna River. After the initial review, PADEP will again review the Site's status and determine if additional action is warranted.

- As required by the 1990 ROD, ground water use will be restricted in the event any new wells are to be installed or modification of usage to existing wells is to be implemented at the Site. The extracted ground water must be tested and the results reported to PADEP. Ground water use at the Site will require a permit or approval by PADEP prior to use.

The 1996 ROD concluded that no additional action, other than that already required by the 1987 ROD and the 1990 ROD, as modified by the 1992

ESD, is required at the Site. Further, EPA has concluded that the 1996 ROD's "No Further Action" alternative's use of engineering and institutional controls at the Site will not interfere with the redevelopment and expansion objectives set forth in the October 1990 Master Plan Harrisburg International Airport commissioned by PennDOT's Bureau of Aviation's State-owned Airports Division.

On August 21, 1996, EPA and PADEP conducted a final inspection of the sentinel well construction. No deficiencies were noted nor were additional activities deemed necessary as a result of the inspection.

All remedial actions for this Site are complete. Collection of monitoring well data from the HIA production wells and the North Base Landfill sentinel wells, initially on a quarterly basis (unless and until modified by PADEP), is the only O&M requirement necessary.

PADEP has assumed the responsibility for assuring compliance with the institutional controls identified in the RODs for this Site, and the review of data generated as part of the 5-year review process. On April 16, 1997, PADEP and PennDOT entered into a Memorandum of Understanding (MOU). The MOU expresses the intent of PADEP and PennDOT that PennDOT will, *inter alia*, perform the sampling of the wells, water and sediment and implement institutional controls, as required by remedy selected in the 1996 ROD.

The statutorily required five-year review of the ground water treatment remedy selected in the 1987 ROD was completed on September 1996. Further five year reviews will be conducted pursuant to OSWER Directive 9355.7-02. "Structure and Components of Five-Year Reviews," and/or other applicable guidance. The next scheduled five year review is set for September, 1998. Subsequent five year reviews will be conducted pursuant to the directive.

The remedies selected for this Site have been implemented in accordance with the three Records of Decision as modified and expanded in the EPA-approved Remedial Designs for the Operable Units and the 1992 ESD. Human health threats and potential environmental impacts have been reduced to acceptable levels. EPA and the PADEP find that the remedies implemented continue to provide adequate protection of human health and the environment.

EPA, with the concurrence of PADEP, believes that the criteria for deletion of this Site have been met. Therefore, EPA is proposing deletion of this Site from the NPL.

Dated: May 15, 1997.

**W. Michael McCabe,**

*Regional Administrator, USEPA Region III.*

[FR Doc. 97-13481 Filed 5-22-97; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Part 1001

RIN 0991-AA91

### Health Care Programs, Fraud and Abuse; Intent To Form the Negotiated Rulemaking Committee for the Shared Risk Exception

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Intent to form negotiated rulemaking committee and notice of meetings.

**SUMMARY:** We have been statutorily-mandated under section 216 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, to establish a negotiated rulemaking committee in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act (FACA). The committee's purpose would be to negotiate the development of the interim final rule addressing the shared risk exception, in section 216 of HIPAA, to the Federal health care programs' anti-kickback provisions. The committee will consist of representatives of interests that are likely to be significantly affected by the interim rule. The committee will be assisted by an impartial facilitator. We are requesting public comments on whether we have properly identified interests that will be affected by key issues discussed below.

**DATES:** Comments will be considered if we receive them at the address provided below by no later than 5 p.m. on June 9, 1997.

The meetings will be held at 9:00 a.m. on June 17-18, 1997, and July 28-30, 1997.

**ADDRESSES:** Please mail or deliver your written comments (1 original and 3 copies) to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-33-NOI, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code

OIG-33-NOI. Comments received timely will be available for public inspections as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5550 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619-0335.

The meetings will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

#### FOR FURTHER INFORMATION CONTACT:

Joel Schaer, (202) 619-0089, OIG Regulations Officer; Judy Ballard, (202) 690-7419, Convener.

#### SUPPLEMENTARY INFORMATION:

#### I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act, Public Law 101-648 (5 U.S.C. 561-569), establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the Act, the head of an agency must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of person who (1) Can adequately represent the interests identified, and (2) are willing to negotiate in good faith to reach a consensus on the rulemaking;
- There is reasonable likelihood that a committee will reach a consensus on the rulemaking within a fixed period of time;
- The negotiated rulemaking process will not unreasonably delay the development and issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to developing the rule proposed by the agency for notice and comment.

Negotiations are conducted by a committee chartered under the FACA (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by an impartial facilitator. The goal of the committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the interim final rule. The process does not affect otherwise